

PHILLIP A. TALBERT
United States Attorney
ARIN C. HEINZ
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS ZEPEDA LOPEZ,

Defendant.

CASE NO. 1:20-CR-00099 DAD-BAM
STIPULATION TO CONTINUE STATUS
CONFERENCE AND ORDER

Date: June 14, 2023
Time: 1:00 p.m.
Honorable Barbara A. McAuliffe

The United States of America, by and through PHILLIP A. TALBERT, United States Attorney, and ARIN C. HEINZ, Assistant United States Attorneys, and the defendant, by and through Mr. David Torres, his attorney of record, hereby stipulate to continue the status conference in this case from June 14, 2023 until September 13, 2023 at 1:00 p.m.

The Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either orally or in writing").

Ends-of-justice continuances are excludable only if "the judge granted such continuance on the

1 basis of his findings that the ends of justice served by taking such action outweigh the best interest of the
2 public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is
3 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or
4 finding that the ends of justice served by the granting of such continuance outweigh the best interests of
5 the public and the defendant in a speedy trial.” *Id.*

6 This Court should consider the following case-specific facts in finding excludable delay
7 appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If
8 continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611
9 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

10 The parties request that time be excluded between June 14, 2023 and September 13, 2023 for the
11 following reasons:

- 12 1. The parties have attempted to resolve this case through a plea. Mr. Torres met with his
13 client multiple times to discuss the terms of the plea agreement and potentially filing a
14 motion to suppress. From these discussions, Mr. Torres has determined that filing a
15 motion to suppress is necessary. Thus, the parties request the following briefing schedule
16 be put in place:
 - 17 a). The parties seek to set the hearing on the motion to suppress on August 14,
18 2023.
 - 19 b). The defense will file a motion to suppress no later than July 14, 2023.
 - 20 c). The government’s opposition will be filed no later than July 31, 2023.
 - 21 d). Defendant’s reply to the government’s opposition, if any, shall be filed no later
22 than August 7, 2023.
- 23 2. The parties seek to set a status conference for September 13, 2023 in order to ensure
24 sufficient time for resolution of the motions. The proposed status conference date
25 represents the earliest date that counsel is available thereafter, taking into account
26 counsel’s schedule and commitments to other clients, and the need for preparation in the
27 case and further investigation.

28 The parties further believe that time should be excluded, in that failure to grant the requested

case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny both the defendants and the government the reasonable time necessary for effective preparation, taking into account the parties' due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv). Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act. Therefore, the parties request that the Court exclude the time until the new hearing date from calculations under the Speedy Trial Act.

Dated: June 8, 2023

PHILLIP A TALBERT
United States Attorney

/s/ Arin C. Heinz

ARIN C. HEINZ

Assistant United States Attorney

DATED: June 8, 2023

/s/David Torres

DAVID TORRES

Attorney for Defendant Jesus Zepeda Lopez

ORDER

IT IS HEREBY ORDERED that the status conference in this case be continued from June 14, 2023 until **September 13, 2023 at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.**

IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of May 10, 2023 until June 14, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the Court at the parties' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: **June 8, 2023**

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE